

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.2726 OF 2001

Shri Jagdish Ujjaram Panchal ...Applicant

Versus

Shri Ashok Bapusaheb Chavan & Anr. ...Respondents

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Mr.S.V.Sadavarte for Applicant.

Mr.Ganesh Gole for Respondent No.1.

Mr.K.V.Saste, A.P.P. for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

JANUARY 13, 2005.

P.C.

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.Gole waives notice for Respondent No.1. Mr.Saste, A.P.P. waives notice for Respondent No.2.

3. As short question is involved, the matter is taken up for final disposal forthwith, by

consent.

4. The order which is put in issue in this Application, is passed by the 9th Judicial Magistrate, First Class, Kolhapur dated 4th July 2000 in criminal case No.232 of 1999 below Exhibit 30. The Applicant instituted complaint under Section 420 of the Indian Penal Code read with Section 138 of the Negotiable Instruments Act, against Respondent No.1. Process was issued pursuant to which, the Respondent No.1 entered into the proceedings. Evidence of Applicant/complainant came to be recorded and after the examination-in-chief of the Applicant was completed, the Respondent No.1 filed subject Application Exhibit 30 for recall of process, on the ground that the complainant has not provided the list of witnesses in the complaint, which amounts to non-compliance of Section 204(2) of the Criminal Procedure Code. That Application was resisted by the Applicant, amongst others, on the ground that the Applicant was not going to examine any other witness, except himself, and as such, no prejudice was to be caused to the Respondent No.1

by non filing of the list of the witnesses in terms of Section 204(2) of the Code. However, the Court below took the view that filing of the list of witnesses along with the complaint was mandatory and as that requirement was not fulfilled, the complaint could not have proceeded. On that basis, the process issued for offence under Section 420 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act, came to be recalled and the Respondent No.1 was discharged.

5. Counsel for the Applicant has placed reliance on the decision of our High Court reported in **2002 Cri.L.J. 2454 in the case of Smt.Pramila Mahesh Shah vs. Employees State Insurance & Anr.** to contend that the view taken by the Court below is contrary to the exposition in the reported Judgement. Reliance is also placed on the other decisions taking the same view, but it is not necessary to multiply the same. In Para 29 of the reported decision, this Court has held that although Section 204(2) is mandatory, that, by itself, would not vitiate the issue of process or the jurisdiction of the Court and where the matter

is at the initial stage, directions can be given to furnish the copy of list of witnesses, if any, before the proceedings actually commenced. This Court, relying on the decision of the Apex Court has further observed that the stage of the proceeding is relevant to determine the prejudice, if any, caused to the accused. Applying the principle of prejudice, the fact that the Applicant had made it more than clear that he was not willing to examine any other witness except himself, there is substance in the argument that there can be no prejudice to the Respondent No.1.

6. Viewed in this perspective, the order as passed by the Court below cannot be sustained. In the circumstances, the impugned order is set-aside and the complaint is restored to the file of the Trial Court to proceed in accordance with law, from the stage, where the impugned order came to be passed.

7. It is made clear that the complaint will proceed on the assurance given by the Applicant that the Applicant will not examine any other

witness except himself.

8. The Trial Court to proceed with the matter expeditiously, uninfluenced by the observations made in the impugned order.

9. Application disposed of on the above terms.

A.M.KHANWILKAR, J.